

AG Contract No.: KR03-1557TRN
ADOT ECS File: JPA 03-079
Project No. HRF- KNG-0-789
TRACS No.: HF089 01C
HF089 02C; HF089 03C; HF089 04C;
Section: North Bank Street – Airway Ave.
to Gordon Drive
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF KINGMAN

THIS AGREEMENT is entered into 30 January, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF KINGMAN acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-6993(g) to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. The State has approved the exchange of \$396,000.00 Highway User Revenue Funds (HURF) in Fiscal Year 2004 to the City for the construction of improvements to North Bank Street from Airway Avenue to Gordon Drive, and such funds will be repaid to the State by withholding from the Western Arizona Council of Governments (WACOG) federal funds and the obligation authority for federal funds in the amount of \$422,255.00 in Fiscal Year 2004. (Phase I: Airway Avenue to Morrow Avenue)

4. The State has approved the exchange of \$468,000.00 Highway User Revenue Funds (HURF) in Fiscal Year 2006 to the City for the construction of improvements to North Bank Street from Airway Avenue to Gordon Drive, and such funds will be repaid to the State by withholding from the Western Arizona Council of Governments (WACOG) federal funds and the obligation authority for federal funds in the amount of \$499,029.00 in Fiscal Year 2006. (Phase II: Morrow Avenue to Kino Avenue)

NO. 26630
Filed with the Secretary of State
Date Filed: 01/30/2004
Janice K. Brewer
Secretary of State

By: Timothy D. Haernewald

5. The State has approved the exchange of \$450,000.00 Highway User Revenue Funds (HURF) in Fiscal Year 2007 to the City for the construction of improvements to North Bank Street from Airway Avenue to Gordon Drive, and such funds will be repaid to the State by withholding from the Western Arizona Council of Governments (WACOG) federal funds and the obligation authority for federal funds in the amount of \$479,836.00 in Fiscal Year 2007. (Phase III: Kino Avenue to Coronado Avenue)

6. The State has approved the exchange of \$450,000.00 Highway User Revenue Funds (HURF) in Fiscal Year 2008 to the City for the construction of improvements to North Bank Street from Airway Avenue to Gordon Drive, and such funds will be repaid to the State by withholding from the Western Arizona Council of Governments (WACOG) federal funds and the obligation authority for federal funds in the amount of \$479,836.00 in Fiscal Year 2008. (Phase IV: Coronado Avenue to Gordon Drive)

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows

II. SCOPE OF WORK

1. The City will:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction.

b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the project construction cost, at the start of construction.

d. Invoice the State for thirty percent of the project construction cost, at the sixty percent construction completion stage, and for thirty percent of the project cost at the ninety percent project construction completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance. Provide ADOT with a letter documenting the notice of the approval and acceptance of the project.

f. Invoice the State for the remaining ten percent of the project cost at the one hundred percent project completion stage after the City, WACOG, and the State (ADOT) representatives have completed final project review.

2. The State will:

a. Within 30 days after receipt and approval of an invoice, pay for thirty percent of the project cost at the start of construction, and for thirty percent of the project cost at the sixty percent project completion state, and for thirty percent of the project cost at the ninety percent project completion state, and pay the final ten percent upon completion of construction.

b. Withhold from WACOG, federal funds and the obligation authority of federal funds \$422,255.00 in Fiscal Year 2004 for construction.

c. Withhold from WACOG, federal funds and the obligation authority of federal funds \$499,029.00 in Fiscal Year 2006 for construction.

d. Withhold from WACOG, federal funds and the obligation authority of federal funds \$479,836.00 in Fiscal Year 2007 for construction.

e. Withhold from WACOG, federal funds and the obligation authority of federal funds \$479,836.00 in Fiscal Year 2008 for construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of all fund transfers provided, however, that this agreement may be canceled at any time prior to the fiscal year transfer identified herein, upon thirty (30) days written notice to the other party.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:


Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007

City of Kingman
Debra Casson, P.E.
Assistant City Engineer
310 North Fourth Street
Kingman, AZ 86401

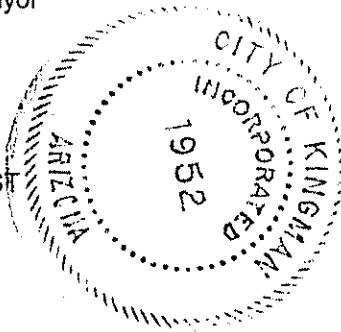
10. In Accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

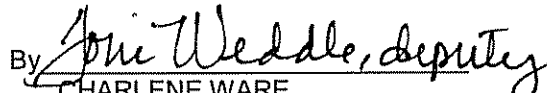
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF KINGMAN

By 
LESTER BYRAM
Mayor

ATTEST



By 
CHARLENE WARE
City Clerk

STATE OF ARIZONA

Department of Transportation

By 
DALE BUSKIRK, Division Director
Transportation Planning Division



City of Kingman

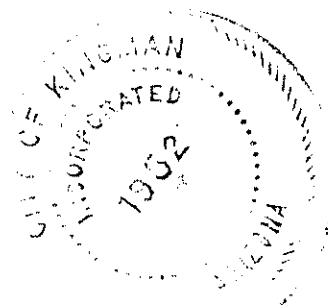
310 NORTH FOURTH STREET • KINGMAN • ARIZONA • 86401 • 928 • 753-5561
www.ci.kingman.az.us

I, Charlene Ware, City Clerk of the City of Kingman, certify that this is a true and accurate copy of an excerpt of the Minutes for the Kingman Common Council meeting held on December 15, 2003. The original is a permanent city record on file in my office.

Given under my hand and seal on January 9, 2004.



Charlene Ware



term, and to APPOINT two (2) new members, Mike Katz and Joe Peeler with Robert Campbell as an alternate.

Lyons SECONDED the Motion and UNANIMOUSLY APPROVED.

– Planning & Zoning Commission

There are two (2) openings for this commission and the following were APPOINTED:

Baker made a MOTION to APPOINT Ron Caskey and Wiatt Wong. Gates SECONDED and UNANIMOUSLY APPROVED

8. **CERTIFICATES OF APPRECIATION** – *Clean City Commission Recognition of Beautification Projects*
– *Hualapai Hills Home School*

Four students received the Certificate of Appreciation for helping to clean up the vacant lot behind Cracker Barrel of all of the windblown trash. The actions of the students helped to improve the appearance of this major commercial area in Kingman. The Mayor presented the students with the award and congratulated them on their service.

9. **CONSENT AGENDA**

a) **Liquor License application - Series 12**

– Yueh Chen Wang, agent for ABC Buffet, a corporation, dba ABC Buffet, 3890 E. Andy Devine to allow the operation of a Restaurant and bar

b) **Special Event Liquor License**

– Beverly Liles, President and CEO of the Kingman Area Chamber of Commerce, requests a Special Event Liquor License for the Chamber's annual Wine & Cheese fundraiser, to be held at the Powerhouse, Saturday, February 7 from 4-11 p.m.

c) **Resolution No. 3918**

–authorizing the Mayor to sign AZ Department of Transportation Grant No. E4F16 for airport security enhancements

d) **Resolution No. 3919**

–authorizing the Mayor to sign AZ Department of Transportation Grant No. E4F17 for airport master plan update

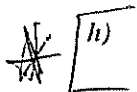
e) **Resolution No. 3917**

– final plat for Shalimar Plaza, Phase I

f) **Resolution No. 3920**

– final plat for Shangri-La Estates III, Phase II, Tract 1971

g) **Change Order No. 1 with Freiday Construction, increasing the amount of the contract by \$14,737.45 for the water and sewer main contract [03/04-01]**



h) Authorizing the Mayor to sign an intergovernmental agreement with AZ Dept of Transportation [ADOT] for the Bank St improvement project [JPA 03-079]

i-1) Change Order No. 1 granting an extension of time to Terra-Ex Contracting, Inc., for the Fairgrounds Blvd. sidewalk contract [03/04-03]

i-2) Acceptance of Fairgrounds Blvd. sidewalk contract and authorization to make final payment to Terra-Ex Contracting, Inc. in the amount of \$39,679.93

j) *Municipal Utilities Commission Recommendation*

j-1) *Resolution No. 3914*

- water service to a 2.91-acre unsubdivided parcel to allow a single family residence, located at 3362 Pasadena, Parcel No. 311-20-077. This site is inside the City limits, and inside the water service boundary area. This was requested by Troy and Mitzie Nolte, applicants and property owners.

j-2) *Resolution No. 3915*

- water service to a new subdivision, known as Southern Vista, Tract 1980, located in the NE ¼ of Sec 20, T21N, R16W. The subdivision consists of 31 lots, one acre in size or larger, located south of Southern, between N. Central and Sage Streets. This site is inside the City limits, and inside the water service boundary area. This was requested by Lee Bruno, Jay Schritter, Mike and Kari Hill, applicants and property owners.

k) *AWARD OF BIDS/PROPOSALS/CONTRACTS*

- Parks Dept - 21 golf carts to Southwest Golf Cars, Inc for \$60,068.00 including 6.3% tax and trade-ins
- Engineering Dept - recoating 1.4 million gal water storage tank to Robison-Prezioso, Inc for \$140,320 including tax [03/04-06]
- Engineering Dept - Gordon Ave 5290' water transmission main construction to Freiday Construction, Inc for \$386,585.00 [contract no. 03/04-02]

l) *ACCOUNTS PAYABLE CLAIMS – In the amount of \$762,619.89*

Mayor Byram entertained a motion to pull Item E from the Consent Agenda for individual instruction, i.e. there wasn't a permit to do grading and the drainage pipe wasn't installed to City standards.



Gates MOTIONED to approve the Consent Agenda with the exception of Item E. French SECONDED and UNANIMOUSLY APPROVED.

5. *Resolution No. 3909*

- Conditional Use Permit [CU-03-09] to allow a community center and training facility for the developmentally disabled on property zoned R-1-6: Residential, single Family, 6,000 sq ft lot minimum. This site is located at 2521 Crozier Ave, on lots 37-39, Blk 99, Golden Gate Addn. This was requested by New Horizons Center for Special Needs Inc, applicant, and Haul and Mary Reddick, property owners.

Requests were originally heard by P & Z Nov. 12 and the CUP was denied due to zoning issues. There are neighbors, who oppose. They are not against the center, just the location. New Horizons, based out of Lake Havasu City, has been operating without the CUP. The facility vacated as soon as the letter, regarding the denial, was received.

The Public Hearing was opened. Citizen comments included the following:

- Several surrounding neighbors like what the center is trying to do for the developmentally challenged, they just oppose to the location.
- Other concerns, expressed by neighbors, are inadequate parking, traffic and what this will do to property values.
- They question whether or not the limitations put by Council, can be enforced.
- Terry Delia, New Horizons Director, is addressed by the Mayor asking her if she wants to operate in this area with the resentment of the neighbors.
- Ms. Delia says she would reconsider due to possible retaliation.

APPROVAL OF THE CITY OF KINGMAN ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF KINGMAN, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 22nd day of December, 2003.

Robert D. Taylor
City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

TERRY GODDARD
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-1557TRN (JPA 03-079), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED 1-22, 2004.

TERRY GODDARD
Attorney General

A handwritten signature in cursive script that reads "Susan Davis".

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:dgr
Attachment
827059